

Message Text

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ACTION STR-07

INFO OCT-01 IO-13 ISO-00 STRE-00 AGRE-00 CEA-01
CIAE-00 COME-00 DODE-00 EB-08 FRB-03 H-01 INR-10
INT-05 L-03 LAB-04 NSAE-00 NSC-05 PA-01 CTME-00
AID-05 SS-15 ITC-01 TRSE-00 USIA-06 SP-02 SOE-02
OMB-01 DOE-15 EUR-12 /121 W
-----102731 231327Z /53

P 231309Z MAR 78
FM USMISSION GENEVA
TO SECSTATE WASHDC PRIORITY 7593

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USMTN

STR FOR ACTION

STR PASS CODEL

E.D. 11652: N/A
TAGS: MTN, ETRD
SUBJECT: GOVERNMENT PROCUREMENT - SINGLE TENDERING

REF: GENEVA 4413

1. AS MENTIONED IN REFTTEL, EC DEL SUGGESTED POSSIBILITY OF "PACKAGE" TO SETTLE OUTSTANDING DIFFERENCES ON TRANSPARENCY, DISPUTE SETTLEMENT, AND SINGLE TENDERING. DUE TO INSUFFICIENT TIME TO BRING UP SINGLE TENDERING DURING WEEK OF MARCH 13 SESSIONS ON GOVERNMENT PROCUREMENT (GP), EC DEL CONTACTED U.S. DEL PRIVATELY TO DISCUSS ISSUE.

2. EC DEL (STRUXIANO) INDICATED WILLINGNESS OF EC TO REACH A COMPROMISE ON SINGLE TENDERING, BUT NOTED LIMITED OFFICIAL USE

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THAT MEMBER STATES WERE A PARTICULAR PROBLEM ON THIS ISSUE. ACCORDINGLY, HE INDICATED THAT SINCE THE EC WAS NOT COMMITTED TO THE LANGUAGE IN MTN/NTM/W/133 (ESSENTIALLY A CANADIAN DRAFT) OR TO THE OECD DRAFT, AN APPROACH UTILIZING EC DIRECTIVE WOULD BE MOST LIKELY TO SUCCEED. AS A FIRST STEP, HE SUGGESTED DISCUSSION OF ARTICLES 6(A) THROUGH (E) (BUT DROPPING

(F), (G), AND (H)) OF THEIR DIRECTIVE. U.S. DEL
ITERATED USG PREFERENCE FOR W/133 SINCE THIS WAS AN
AGREED NEGOTIATING DOCUMENT, BUT INDICATED OUR WILLINGNESS
TO CONSIDER ANY APPROACH WHICH WOULD HELP REACH CON-
SENSUS ON BRACKETED TEXTS.

3. IN BRIEF DISCUSSION, U.S. QUICKLY READ THROUGH
W/133 AND EC DIRECTIVE AND NOTED CERTAIN OBVIOUS DIFFI-
CULTIES WITH EC POSITION. IN EC ARTICLE 6(B), U.S.
DEL NOTED THAT TERMS "TECHNICAL OR ARTISTIC REASONS"
WERE TOO VAGUE. EC DEL EXPLAINED THAT "ARTISTIC" REFER-
RED TO WORKS OF FINE ART WHICH COULD BE COMMISSIONED,
SUCH AS A STATUE FOR A BUILDING. "TECHNICAL" IS USED
TO REFER TO THOSE PRODUCTS WHICH ARE NOT OF A PROPRIETARY
NATURE. EC DEL COULD NOT GIVE A GOOD EXAMPLE, EXCEPT
FOR REFERRAL TO PRODUCTS WHICH COULD NOT BE PATENTED.
IN EC ARTICLE 6(C), U.S. DEL NOTED POSSIBILITY OF
GENERAL DEROGATION FROM LANGUAGE, PARTICULARLY POSSIBIITY
OF EXCLUDING SCIENTIFIC INSTRUMENTS WHICH COULD BE USED
IN RESEARCH AND DEVELOPMENT. EC DEL INDICATED THAT
LATTER WAS NOT PURPOSE OF SECTION. ON COMPARISON
WITH ORIGINAL FRENCH VERSION, EC DEL NOTED ENGLISH
TRANSLATION WAS FUZZY AND THAT HE WOULD LOOK INTO
REDRAFTING THE PROVISION. WITH REGARD TO TIME LIMITS
IN EC ARTICLE 6(E), EC DEL AGREED THAT CONCEPT COULD
NOT BE TRANSFERRED TO INTERNATIONAL TEXT UNLESS SPECIFIC
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TIME PERIODS ARE INCLUDED IN OTHER TENDERING PROCEDURE
PARAGRAPHS.

4. WITH REGARD TO W/133, U.S. NOTED NEED FOR STRICT
CONTROL ON USE OF EXCEPTION IN PARA 15 (B), THEREFORE
U.S. HAD RECOMMENDED LANGUAGE, "HIGHLY SPECIALIZED TECH-
NICAL CHARACTERISTICS". EC DEL INDICATED POSSIBLE NEED
FOR AN EXCEPTION FOR PRODUCTS WHICH WERE NOT HIGHLY
SPECIALIZED, BUT FOR WHICH REPLACEMENT FROM ANOTHER
SUPPLIER MAY INCLUDE "DISPROPORTIONATE" PROBLEMS. A
POOR EXAMPLE GIVEN BY EC WAS A SIMPLE PRODUCT SUCH
AS FIRE HOSES WHICH BECAUSE OF DIFFERENT SIZES COULD
REQUIRE REPLACEMENT OF ALL CONNECTIONS ON FIRE TRUCKS
IF NOT SUPPLIED BY THE SAME MANUFACTURER. U.S. DEL
SUGGESTED EC CONSIDER THIS ISSUE FURTHER.

5. IN PARA 15(C), U.S. DEL NOTED TERM "OR IRREGULAR"
WAS TOO IMPRECISE. EC DEL STATED THAT INTENT OF WORD
WAS TO COVER CERTAIN ILLEGAL SITUATIONS SUCH AS A
SUPPLIER ATTEMPTING TO BRIBE A PURCHASING OFFICER.

6. BOTH DELS AGREED TO REFLECT FURTHER ON THIS DIS-

CUSSION AND TO COME BACK TO THE ISSUE DURING WEEK OF
APRIL 10. COMMENT: IN SEVERAL AREAS IT APPEARS THAT
AGREEMENT COULD BE REACHED BY MORE PRECISELY DRAFTING
EC INTENTIONS. END COMMENT.

7. RECOMMENDATION - MTN DEL RECOMMENDS THAT USG MAINTAIN
ITS FLEXIBILITY REGARDING WHICH DRAFT IS TO BE USED FOR
NEGOTIATING PURPOSES. AS LONG AS U.S. SUBSTANTIVE
POSITION IS NOT ERODED, WE SEE NO REASON NOT TO BASE
WORK ON ARTICLE 6 OF EC DIRECTIVE IF IT WILL FACILITATE
ACCEPTANCE BY MEMBER STATES. ACCORDINGLY, WE RECOMMEND
THAT WASHINGTON CONSIDER ARTICLE 6 OF EC DIRECTIVE
AND SUGGEST CHANGES PRIOR TO APRIL 10 MEETING.

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8. DRAFTED BY SHELLEY. CULBERT

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: GOVERNMENT PROCUREMENT, DISPUTE SETTLEMENT, TRADE
Control Number: n/a
Copy: SINGLE
Draft Date: 23 mar 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978GENEVA04453
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D780128-0335
Format: TEL
From: GENEVA USMTN
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t19780333/aaaabbuq.tel
Line Count: 137
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: be3a1fbf-c288-dd11-92da-001cc4696bcc
Office: ACTION STR
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 78 GENEVA 4413
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 05 may 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: N/A
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 3228977
Secure: OPEN
Status: NATIVE
Subject: GOVERNMENT PROCUREMENT - SINGLE TENDERING
TAGS: ETRD, MTN
To: STATE
Type: TE
vdkgvwkey: odhc://SAS/SAS.dbo.SAS_Docs/be3a1fbf-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014